

AGP-1. CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS

- (a) Contractor Cost or Pricing Data. Whenever the price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$500,000, the Contractor agrees to furnish the Institute certified cost or pricing data, using the JPL certificate, form JPL 2496, or approved equivalent unless the Institute determines that the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or that the prices are set by law or regulation.

- (b) Subcontractor Cost or Pricing Data.

(The requirements of this paragraph (b) shall (i) become operative only for any modification to this Contract involving a pricing adjustment expected to exceed \$500,000, and (ii) be limited to such modifications.)

- (1) Before awarding any subcontract expected to exceed \$500,000 when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is:

(A) Based on adequate price competition;

(B) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(C) Set by law or regulation.

- (2) The requirement for obtaining certified cost or pricing data with respect to any Contract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.

- (3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.804-4, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under paragraph (c)(2) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

- (4) The Contractor shall insert the substance of this Article, including this paragraph (b)(4), in each subcontract that exceeds \$500,000 when entered into.

- (c) Price Reduction for Defective Cost or Pricing Data - Modifications.

(This Article shall become operative only for any modification to this Contract involving a pricing adjustment expected to exceed \$500,000, except that this Article does not apply to any modification for which the price is (i) based on adequate price competition, (ii) based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or (iii) set by law or regulation.)

- (1) If any price, including profit or fee, negotiated in connection with any modification under this Article, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this Article becomes operative under the terms of this paragraph.

- (2) Any reduction in the Contract price under subparagraph (c)(1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (3) (A) If the Contracting Officer determines under subparagraph (c)(1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:
- a. The Contractor certifies to the Contracting Officer that, to the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - b. The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
- a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.

(d) Examination of Records.

For purposes of verifying that certified cost or pricing data required to be submitted in conjunction with a change or modification to this Contract, or otherwise pursuant to the provisions of this Article, were accurate, complete, and current, the Contracting Officer of the Prime Contract, or authorized representatives, shall - until the expiration of three years from the date of final payment under this Contract or of the time periods specified in FAR subpart 4.7 and any corresponding implementing or supplementing provisions in the NFS, whichever expires earlier - have the right to examine those books, records, documents, papers and other supporting data which involve transactions related to this Contract or which will permit adequate evaluation of the cost or

pricing data submitted, along with the computations and projections used therein. The rights herein are in addition to those contained in any other provision of this Contract dealing with records, audit and records, and examination of records.

- (e) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).